

ORDINANCE NO. 2018-115

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING THE THIRD RENEWAL OF A GROUND LEASE WITH CCTM2, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO LEASE A SITE LOCATED AT O'QUINN PARK, 6051 WEST 2 AVENUE, HIALEAH, FLORIDA TO USE A WIRELESS COMMUNICATIONS FACILITY ON A 100-FOOT HIGH MONOPOLE TOWER FOR A TERM OF FIVE YEARS, BEGINNING ON APRIL 30, 2017 AND ENDING ON APRIL 30, 2022 FOR A BASE ANNUAL RENT OF \$57,011.33 FOR THE FIRST YEAR OF THE RENEWAL PERIOD, WITH AN ANNUAL INCREASE OF 5% EACH YEAR, TOGETHER WITH SUCH RIGHTS AND DUTIES AS MORE FULLY DESCRIBED IN THE GROUND LEASE, AND GRANTING NON-EXCLUSIVE ACCESS FOR INGRESS, EGRESS AND UTILITIES IN CONNECTION CONTINUED OPERATION AND MAINTENANCE OF THE COMMUNICATIONS TOWER; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Hialeah, Fla., Ordinance 07-28 (Mar. 1, 2007), the City of Hialeah and T-Mobile South LLC ("T-Mobile") entered into a ground lease to construct and operate a cellular tower at O'Quinn Park, 6051 West 2 Avenue, Hialeah, Florida for five years, with two five-year renewal options; with initial base rent of \$35,000 with 5% annual increases; and

WHEREAS, T-Mobile constructed the cellular tower and operated the wireless communications facility for five years and accordingly, has requested to exercise its option to renew for a second five-year term; and

WHEREAS, CCTM2, LLC, acquired the cellular tower from T-Mobile, and operates the wireless communications facility; and

WHEREAS, it is in the best interest of the City to allow for the use of wireless communication towers on public property and obtain revenue through a ground lease with the base rent for the first year of the renewal term to be set at \$57,011.33.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby approves the second renewal of a ground lease with CCTM2 LLC, a Delaware limited liability company, to lease a site located at O'Quinn Park, 6051 West 2 Avenue, Hialeah, Florida, to use a wireless communication facility on a 100-foot high monopole tower, beginning on April 30, 2017 and ending on April 30, 2022, for a base annual rent of \$57,011.33, with an annual increase of 5% each year, together with such rights and duties as more fully described in the ground lease, a copy of which is attached hereto and made a part hereof as Exhibit "1".

Section 2: The City of Hialeah, Florida hereby grants a non-exclusive access for ingress, egress and utilities in connection with the continued operation and maintenance of the communications tower.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the

City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

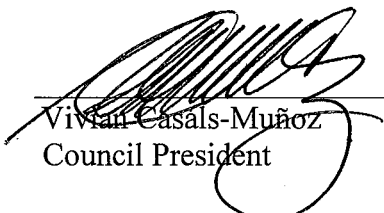
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

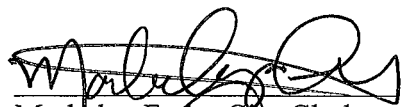
PASSED and ADOPTED this 23 day of October, 2018.

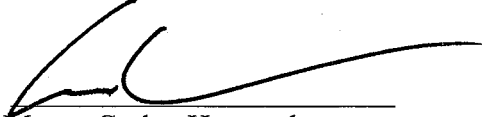
THE FOREGOING ORDINANCE
OF THE CITY OF MIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Vivian Casals-Muñoz
Council President

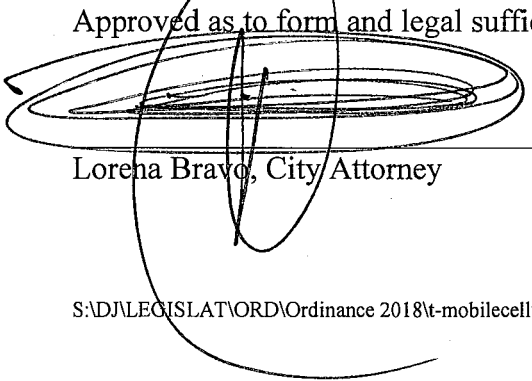
Attest:

Approved on this 24 day of October, 2018.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena Bravo, City Attorney

Ordinance was adopted by a 5-0-2 vote with Councilmembers, Zogby, Lozano, Casals-Munoz, Garcia-Martinez, Hernandez, voting "Yes" and with Councilmembers Caragol and Cue-Fuente absent.

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Ground Lease

THIS Lease ("Lease") entered into as of this 2nd day of March, 2007, by and between the City of Hialeah, Florida, a Florida municipal corporation ("Landlord"), 501 Palm Avenue, Hialeah, Florida and T-Mobile South LLC, a Delaware limited liability company, with its principal office located at 12920 S.E. 38th Street, Bellevue, Washington 98006 ("Tenant").

Recitals

A. Landlord is the owner in fee simple of a parcel of land located in the City of Hialeah, Miami-Dade County, Florida, whose legal description is set forth on the attached Exhibit A.

B. Tenant is in the wireless cellular communications business and desires to lease the site described below from Landlord and to construct and/or replace on such site a 100-foot high monopole tower camouflaged in the shape of a flagpole for use in connection with such business ("Tower").

C. Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

In consideration of the mutual covenants contained in this Lease, the parties agree as follows:

→ 1. Leased Site. Landlord leases to Tenant and Tenant leases from Landlord the real property legally described on the attached Exhibit A (the "Land") together with a non-exclusive easement for ingress, egress and utilities over the adjacent real property legally described on the attached Exhibit B (the "Access Easement"). The Land and the Access Easement are collectively referred to as the "Site."

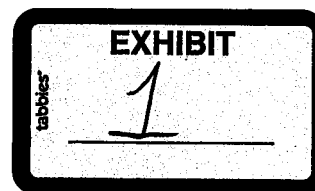
2. Sublease to Landlord. The parties contemplate Landlord using the Tower free of charge for a radio repeater and tornado siren ("Landlord's Communications Equipment") and Tenant coordinating with Landlord (and any subcontractor of Landlord) the installation of Landlord's Communication Equipment on the Tower.

3. Relocation. Notwithstanding any provision in this Lease to the contrary, Landlord shall have the right, at any time (and from time to time) during the term of this Lease, to relocate the Tower, at Landlord's expense, to another location suitable for Tenant's use.

→ 4. Term.

a. This Lease shall commence on the earlier of the date that Tenant secures all necessary local and government permits to commence its construction or 60 days

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from the date of this Lease (the Commencement Date") and shall terminate at midnight on the last day of the fifth (5th) anniversary of the Commencement Date (the "Initial Term"). Upon expiration of the Initial Term, this Lease may be renewed for 2 additional terms of 5 years each (each a "Renewal Term"), upon agreement of the parties and acceptance by the City of Hialeah by ordinance, and in such case, Rent during the Renewal Terms will increase in accordance with Section 5.c, below.

b. Landlord may terminate this Lease at any time, by providing 180 days written notice to Tenant, following the proposal or adoption by the State or Federal government of a law, rule, regulation or decision to the effect that due (in whole or in part) to a landlord having entered into a lease such as this one, the landlord is required to allow additional antennas or towers (of any sort or description) on its property. The rule proposed by the Federal Communications Commission in 1999 in WT Docket 99-217 and CC Docket 96-98 (if applicable to cellular type towers or antennas) would be such a rule. In addition to the foregoing right to terminate this Lease, Landlord has the right, without any further liability, to terminate all of Tenant's right to the Site upon not less than sixty (60) days prior written notice to Tenant if:

- (1) Landlord is prohibited by any governmental entity from continued use of the Site during the term of this Lease; or
- (2) Landlord's right to control or occupy the Site is terminated due to causes beyond its control.

→ 5. Rent.

a. Tenant shall pay Landlord as rent for the Site each year during the term of this Lease the sum of Thirty-Five Thousand Dollars (\$35,000.00) ("Base Rent"). Tenant shall pay Base Rent for the first year on the Commencement Date, and Tenant shall pay Landlord Base Rent annually in advance on or before each anniversary of the Commencement Date. Base Rent shall be increased each year as described hereafter.

b. Tenant shall pay Landlord a late payment charge equal to five percent (5%) of the amount past due for any rent payment not paid within 5 days of the due date.

c. The Base Rent shall be increased annually effective as of each anniversary of the Commencement Date by an amount equal to five percent (5%).

d. If this Lease is terminated at a time other than on the last day of the month, Rent shall be prorated as of the date of termination and, in the event of termination

for any reason other than Tenant's default, all prepaid Rents shall be refunded to the Tenant.

- e. Base Rent, Additional Rent and all other consideration to be paid or provided by Tenant to Landlord shall constitute "Rent" hereunder and shall be paid or provided without offset.

→ 6. Use of Site. Tenant shall use the Site for the construction and operation of the Tower and the placement and operation thereon of "personal wireless service facilities" as such is defined in §704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c)(7)(C)(2), and Landlord's Communication Equipment and for no other purpose. Tenant shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use, operation, maintenance, construction and/or installation of the Site.

→ 7. Tenant Improvements, Plans, Bonds.

a. (1) Tenant may improve the Site by constructing the Tower and any related ancillary support facilities and structures on the Site. Prior to commencing construction, Tenant shall submit plans and specifications for all improvements to Landlord for Landlord's written approval, such approval not to be unreasonably withheld. No improvement, construction, installation or alteration shall be commenced until plans for such work have been approved by the Landlord and all necessary permits have been properly issued.

(2) Such plans shall include: Fully dimensioned site plans that are drawn to scale and show (i) the proposed location of the antennas, equipment shelter, driveway and parking areas, (ii) the proposed changes in the landscape, (iii) the proposed type and height of fencing, (iv) the proposed color of all structures, including fencing, (v) the proposed type of construction material for all structures, including fencing, and any other details that the Landlord may request.

(3) Prior to commencing construction, Tenant shall also provide Landlord with the name of the contractor that will be constructing the improvements. The contractor is subject to the prior written approval of Landlord, such approval not to be unreasonably withheld. All improvements shall be constructed in a workmanlike manner without the attachment of any liens to the Site and shall be completed in compliance with all applicable laws, rules, ordinances and regulations.

(4) No improvements or modifications to the Tower shall be made without the Landlord's consent. Moreover, any such improvements or modifications are subject to the conditions set forth in paragraph a. (1), (2) and (3) above.

(5) Landlord acknowledges that the Tower will function as a flagpole. At its sole cost and expense, Landlord shall purchase the flag to be flown on the Tower and perform all maintenance, repair and replacement of the flag, including any raising and lowering of the flag. All maintenance and repair to the pulleys, lines, lights and any and all related equipment necessary for the flag's operation shall be performed by Tenant at its sole cost and expense. Both parties agree that no equipment shall be allowed to interfere with the flying of the flag on the Tower. The Tenant shall install an American Flag, illuminated as required, at the Tenant's sole cost and expense, and further agrees to replace such flag, from time to time, if such flag is tattered, damaged or in poor condition from normal use.

b. (1) The Tower shall remain the property of Tenant and Tenant shall, at Landlord's request, remove the Tower upon termination of the Lease. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Site, including use of the Site by Landlord or any of Landlord's assignees or lessees. If, however, Tenant requests permission not to remove all or a portion of the improvements, and Landlord consents to such non-removal, title to the affected improvements shall thereupon transfer to Landlord and the same thereafter shall be the sole and entire property of Landlord, and Tenant shall be relieved of its duty to otherwise remove same. All other alterations, improvements and structures located or constructed on the Site (except for movable equipment and trade fixtures), shall become the property of Landlord upon termination of the Lease, except that Landlord may, by written notice to Tenant, require Tenant to remove all such improvements upon termination of the Lease. Any personal property, equipment or other improvements which are not removed prior to the termination of this Lease shall become the property of Landlord, at Landlord's option.

(2) Upon removal of the improvements (or portions thereof) as provided above in subpart (1), Tenant shall restore the affected area of the Site to the reasonable satisfaction of Landlord.

(3) All costs and expenses for the removal and restoration to be performed by Tenant pursuant to subparts (1) and (2) above shall be borne by Tenant, and Tenant shall hold Landlord harmless from any portion thereof.

c. Tenant shall, prior to commencing any construction on the Site, post a payment bond in form and with a surety company reasonably acceptable to Landlord, assuring that the improvements will be constructed without the attachment of any construction liens.

d. Tenant shall annually post a bond (or, at Tenant's option, a letter of credit) from a surety or bank reasonably acceptable to Landlord, and in an amount reasonably deemed necessary by Landlord, to assure that the funds will be available at the termination of the Lease for removal of the Tower.

e. Tenant shall keep the Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Tenant. If any lien is filed against the Site as a result of acts or omission of Tenant or Tenant's employees, agents or contractors, Tenant shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Landlord within ninety (90) days after Tenant receives written notice that the lien has been filed.

8. Use by Landlord and Other Providers.

a. With Landlord's written consent, Tenant may allow another person or entity to use the Tower for purposes of collocation, provided Tenant notifies the third party that such collocation is subject to such person or entity obtaining a ground lease with Landlord. In the event of such collocation, Landlord shall be entitled to all ground rents and Tenant shall be entitled to all Tower rents.

b. Tenant shall design and construct the Tower to accommodate at least one other telecommunications providers ("Other Providers"). Toward this end, Tenant shall design and construct the Tower to permit co-location. Tenant shall also design and construct all ancillary support facilities, including any support buildings, so that at least one other provider will have an adequate amount of space to house their own support equipment.

c. Tenant shall cooperate with each new Other Provider in connection with their locating and placing their antennas and other facilities on the Tower and in the ancillary support facilities. If the location and placement can not be agreed to after a good faith effort has been made, Landlord shall make a final resolution and plan that binds both Tenant and the Other Provider; provided, however, that in no event shall Landlord have the right to require Tenant to relocate Tenant's equipment on the Tower of site to accommodate the Other Provider.

d. Each new Other Provider shall be solely responsible for the cost of locating and placing their equipment onto the Tower and into the ancillary support facilities, including any support buildings. The Other Providers shall also be

responsible for any liabilities that arise from the Other Provider's use of the Tower.

e. Landlord shall be allowed to conduct an interference study indicating whether Tenant's or an Other Provider's use of the Towers will interfere with Landlord's proposed use of the Tower. In the event that such a study indicates that Tenant's or Other Provider's use will potentially interfere with Landlord's proposed use of the Tower, Landlord may require Tenant, at Tenant's expense, to take reasonable steps to relocate Tenant's antenna and other equipment so as to remove or minimize the interference, to the extent Landlord reasonably deems necessary.

9. Net Lease. Landlord shall not be required to make any expenditures of any kind in connection with this Lease or to make any repairs or improvements to the Site. The parties agree that this is a net lease intended to assure Landlord the rent reserved on an absolute net basis. In addition to the Rent reserved above, Tenant shall pay to the parties entitled thereto all taxes, assessments, insurance premiums, maintenance charges, and any other charges, costs and expenses against the Site that may be contemplated under any provisions of this Lease.

10. Maintenance. Tenant shall, at its own expense, maintain the Site and all improvements, equipment and other personal property on the Site in good working order, condition and repair. Tenant shall keep the Site free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

→ 11. Access. Landlord and its agents shall have the right to enter the Site at reasonable times to examine and inspect the Site. Tenant, its employees, agents and contractors shall have 24-hours-a-day, 7 days-a-week access to the Site at all times during the Initial Term of this Lease and any Renewal Term.

12. Utilities. Tenant shall be responsible for obtaining any utility service to the Site that it desires. Tenant shall pay when due all charges for utilities to the Site during the term of the Lease.

13. License Fees. Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Site.

14. Governmental Approvals. This Lease is contingent upon Tenant's obtaining all necessary governmental approvals, permits or licenses that Tenant may deem necessary. This contingency shall be deemed waived 30 days after the date of this Lease unless Tenant provides Landlord written notice within the 30 day period that it is terminating the

Lease in light of its inability to obtain necessary approvals. Tenant's installation, operation and maintenance of its transmission facilities shall not interfere with the Landlord's public safety communications system.

15. Default and Landlord's Remedies. It shall be a default (i) if Tenant defaults in the payment or provision of Rent or any other sums to Landlord when due, and does not cure such default within 10 business days after Tenant receives written notice of such default from the Landlord; or (ii) if Tenant defaults in the performance of any other covenant or condition of this Lease and does not cure such other default within thirty (30) days after written notice from Landlord specifying the default complained of; provided, however, that Tenant will not be in non-monetary default hereunder if it commences and completes curing any such non-monetary default within such 30-day period if such non-monetary default can be reasonably cured within the 30-day period, and, provided, further, that if such non-monetary default cannot be reasonably cured within the 30-day period, the parties may agree to a reasonable time extension, not to exceed 90 days, within which Tenant must complete the cure of such non-monetary default, or (iii) if Tenant abandons or vacates the Site; or (iv) if Tenant is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or (v) if Tenant becomes insolvent. If Tenant fails to cure any such default within the applicable notice and cure period, Landlord shall have the right to terminate this Lease immediately upon written notice to Tenant, retain any prepaid Rent, and pursue any other remedies available to Landlord at law or in equity.

In the event of a default, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have by operation of law, without any further demand or notice, to re-enter the Site and eject all persons therefrom, and either (a) declare this Lease at an end, in which event Tenant shall immediately remove the Tower (and proceed as set forth in Section 5b) and pay Landlord a sum of money equal to the total of (i) the amount of the unpaid rent accrued through the date of termination; (ii) the amount by which the unpaid rent reserved for the balance of the then-current term exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or (b) without terminating this Lease, relet the Site, or any part thereof, for the account of Tenant upon such terms and conditions as Landlord may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due Landlord hereunder for the balance of the then-current term, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Tenant shall pay Landlord any deficiency monthly, notwithstanding that Landlord may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and Landlord may bring an action therefor as such monthly deficiency shall arise.

No re-entry and taking of possession of the Site by Landlord shall be construed as an election on Landlord's part to terminate this Lease, regardless of the extent of renovations and alterations by Landlord, unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

If suit shall be successfully brought by Landlord for recovery of possession of the Site, for the recovery of any Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant, the Tenant shall pay to the Landlord all expenses incurred therefore, including reasonable attorney fees.

16. Cure by Landlord. In the event of any default of this Lease by Tenant, the Landlord may at any time, after notice, cure the default for the account of and at the expense of the Tenant. If Landlord is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the Landlord's rights under this Lease, the sums so paid by Landlord, with all interest, costs and damages shall be deemed to be Rent otherwise due and shall be added to the Rent and shall be due from the Tenant to Landlord on the first day of the month following the incurring of the respective expenses.

17. Damage or Destruction. If the Tower or any portion of the tower is destroyed or damaged so as to materially hinder effective use of the Tower through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord. In such event, Tenant shall promptly remove the Tower from the Site and the parties shall proceed as set forth in Section 7b above. This Lease (and Tenant's obligation to pay Rent) shall terminate upon Tenant's fulfillment of the obligations set forth in the preceding sentence, at which termination Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. Landlord shall have no obligation to repair any damage to any portion of the Site.

18. Condemnation. In the event the Site is taken by eminent domain, this Lease shall terminate as of the date title to the Site vests in the condemning authority. In the event a portion of the Site is taken by eminent domain so as to materially hinder effective use of the Site by Tenant, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Site, shall belong to Landlord. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any

and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, and leasehold improvements.

19. Indemnity and Insurance.

a. Disclaimer of Liability: Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Tower or Site.

b. Indemnification: Tenant shall, at its sole cost and expense, indemnify and hold harmless Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors, elected or appointed (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level or on appeal, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Tenant, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Site or the Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

ii. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level or on appeal, expert witnesses and other consultants), except for claims arising from the gross negligence or intentional acts of Indemnitees, which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Tenant, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Tower or Site and, upon the written request of Landlord, Tenant shall cause such claim or lien covering Landlord's property to be discharged or bonded in accordance with Section 7(e).

iii. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level and on appeal, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by Tenant or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Florida or United States, including those of the Federal Securities and Exchange Commission, whether by Tenant or otherwise.

c. Assumption of Risk: Tenant undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "Tenant" for the purpose of this Section), all risk of dangerous conditions, if any, on or about the Site, and Tenant hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitee's gross negligence) arising out of the Tenant's installation, operation, maintenance, condition or use of the Site or Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

d. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Tenant shall, upon notice from any of the Indemnitees, at Tenant's sole cost and expense, resist and defend the same with legal counsel mutually selected by Tenant and Landlord (unless such counsel is selected by Tenant's insurer, in which case neither Landlord nor Tenant will have any role in or approval rights over such selection); provided however, that Tenant shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of Landlord and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Tenant.

e. Notice, Cooperation and Expenses: Landlord shall give Tenant prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 19. Nothing herein shall be deemed to prevent Landlord from cooperating with Tenant and participating in the defense of any litigation by Landlord's own counsel. Tenant shall pay all expenses incurred by Landlord in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the Landlord's attorney, and the actual expenses of Landlord's agents, employees or expert witnesses, and disbursements and liabilities assumed by Landlord in connection with such suits, actions or proceedings but shall not

include attorneys' fees for services that are unnecessarily duplicative of services provided Landlord by Tenant.

If Tenant requests Landlord to assist it in such defense then Tenant shall pay all expenses incurred by Landlord in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the Landlord's attorney, and the actual expenses of Landlord's agents, employees or expert witnesses, and disbursements and liabilities assumed by Landlord in connection with such suits, actions or proceedings.

f. Insurance: During the term of the Lease, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each accident.

ii. Comprehensive commercial general liability insurance with minimum limits of Seven Million Dollars (\$7,000,000) as the combined single limit for each occurrence of bodily injury, personal injury, death and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

iii. Pollution Legal Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Million Dollars (\$5,000,000).

iv. Automobile liability insurance covering all owned, hired, and nonowned vehicles in use by Tenant, its employees and agents, affording coverage for bodily injury and property damage coverage to comply with the provisions of state law with minimum limits of Two Million Dollars (\$2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

v. At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the

Tower. Upon completion of the installation of the Tower, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Site. The amount of insurance at all times shall be representative of the insurable values of Tenant's property and equipment installed or constructed at the Site.

vi. Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Site that is damaged and caused the loss of revenue.

vii. All policies other than those for Worker's Compensation and pollution legal liability shall be written on an occurrence and not on a claims made basis.

viii. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. Named Insureds: All policies, except for builder's risk, property, business interruption and worker's compensation and pollution legal liability policies, shall name Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

h. Evidence of Insurance: Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph, of required premiums shall be filed and maintained with Landlord annually during the term of the Lease. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

i. Cancellation of Policies of Insurance: Tenant agrees to give Landlord thirty (30) days prior written notice of the cancellation or non-renewal of all insurance policies maintained pursuant to this Lease.

j. Insurance Companies: All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Florida or surplus line carriers on the State of Florida Insurance Commissioner's approved list of companies qualified to do business in the State of Florida. All insurance carriers and surplus line carriers shall be rated A-- or better by A.M. Best Company.

k. Deductibles: All insurance policies may be written with deductibles and retainages, and the Tenant agrees to indemnify the City for all deductibles. Tenant agrees to indemnify and save harmless Landlord, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by Tenant under this Lease.

l. Contractors: Tenant shall require that each and every one of its contractors and their subcontractors who perform work on the Site to carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverages of the type and in the amounts which Tenant is required to obtain under the terms of this Lease.

m. Review of Limits: Once during each calendar year during the term of this Lease, Landlord may review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds, Tenant shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense.

20. Hazardous Substance Indemnification. Except as provided by law, Tenant represents and warrants that its use of the Site herein will not generate any hazardous substance, and it will not store or dispose on the Site nor transport to or over the Site any hazardous substance. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all reasonable attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees, contractors or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

21. Holding Over. Any holding over after the expiration of the term hereof, with the consent of the Landlord, shall be construed to be a tenancy from month to month at 150% of the rents herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

22. Subordination to Mortgage. Any mortgage or deed of trust now or subsequently placed upon any property of which the Site are a part shall be deemed to be prior in time and senior to the rights of the Tenant under this Lease. Tenant subordinates all of its interest in the leasehold estate created by this Lease to the lien of any such mortgage or deed of trust. Tenant shall, at Landlord's request, execute any additional reasonable documents necessary to indicate this subordination; provided, however, that the holder of any such mortgage or deed of trust must agree in writing that so long as Tenant is not in default under this Lease beyond any applicable grace or cure period, Tenant's use and quiet enjoyment of the Site will not be disturbed before or after foreclosure by anyone claiming by, through or under such holder.

→ 23. Security Deposit. Contemporaneously with the execution of this Lease, Tenant has deposited with the Landlord a payment bond in the sum of \$ 25,000.00. The deposit shall be held by the Landlord, without liability for interest, as security for the faithful performance by the Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by the Tenant during the term hereof.

24. Acceptance of Site. By taking possession of the Site, Tenant accepts the Site in the condition existing as of the Commencement Date. Landlord makes no representation or warranty with respect to the condition of the Site and Landlord shall not be liable for any latent or patent defect in the Site.

25. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than ten (10) days prior request by Landlord, deliver to Landlord a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, Landlord is not in default under any provisions of the Lease; and (d) such other matters as Landlord may reasonably request.

26. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to Landlord, to: Rafael E. Granado, City Clerk
City of Hialeah
501 Palm Avenue, 3rd Floor
Hialeah, Florida 333010
With a copy to the Mayor and same address

With a copy to: Law Department
City of Hialeah
501 Palm Avenue, 4th Floor
Hialeah, Florida 33010

If to Tenant, to: T-Mobile South LLC
3407 W. Dr. Martin Luther King Drive
Suite 400
Tampa, Florida 33607
Attn.: Cell Site Lease Administrator

With a copy to: T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Cell Site Administrator
With a copy to: Attn: Legal Department

→ 27. Assignment and Subletting.

(a) Subject to the provisions of Section 7, Tenant shall not assign this Lease in whole or in part, or sublet all or any part of the Site without the Landlord's prior written consent, such consent not be unreasonably withheld or delayed. Consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. If this Lease is assigned, or if the Site or any part thereof is sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the rent and other obligations of Tenant hereunder reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver or release of Tenant from the further performance by Tenant of the covenants on the part of Tenant hereunder contained. Notwithstanding any assignment or sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

(b) Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to assign this Lease without Landlord's consent to any parent or subsidiary of Tenant, or subsidiary or affiliate of Tenant's parent, or any party that merges or consolidates with Tenant or its parent, or any party that purchases or otherwise acquires all or substantially all of Tenant's stock or assets.

(c) Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Lease on and after the date of such assignment. Any such assignee shall upon

demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

28. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

29. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Tenant to Landlord after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

→ 30. Optional Termination. Landlord shall have at its sole discretion the option of terminating this Lease if Tenant loses its license to provide PCS/cellular services for any reason, including, but not limited to, non-renewal, cancellation, or expiration of its license. Notwithstanding, any other termination rights available to Tenant under this Lease, Tenant, may terminate this Lease within 90 days prior written notice to Landlord, if, in Tenant's reasonable judgment, the Site cannot be used for the purpose described in Section 6 hereof due to radio frequency transmission and reception issues related to (I) other radio frequency sources, (ii) engineering or network design issues or (iii) physical changes in the buildings and improvements in the vicinity of the Site following the Commencement Date.

→ 31. Taxes.

a. Tenant shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Site, if any, which become due and payable during the term of this Lease. All such payments shall be made, and evidence of all such payments shall be provided to Landlord, at least ten (10) days prior to the delinquency date of the payment. Tenant shall pay all taxes on its personal property on the Site.

b. Tenant shall indemnify Landlord from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level and on appeal, expert witnesses and consultants),

which may be imposed upon, incurred by or be asserted against Tenant in relation to the taxes owed or assessed on the Site.

c. If the methods of taxation in effect at the Commencement Date of the Lease are altered so that in lieu of or as a substitute for any portion of the property taxes and special assessments now imposed on property there is imposed a tax upon or against the rentals payable by Tenant to Landlord, Tenant shall pay those amounts in the same manner as provided for the payment of real and personal property taxes.

32. Dispute Resolution.

a. Except as otherwise provided in this Lease, any controversy between the parties arising out of this Lease or breach thereof, is subject to the mediation process described below.

b. A meeting will be held promptly between the parties to attempt in good faith to negotiate a resolution of the dispute. Individuals with decision making authority will attend the meeting regarding the dispute. If within twenty (20) days after such meeting the parties have not succeeded in resolving the dispute, they will, within twenty (20) days thereafter submit the dispute to a mutually acceptable third party mediator who is acquainted with dispute resolution methods. Landlord and Tenant will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding. Neither party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.

c. The costs of mediation, including any mediators fees, and costs for the use of the facilities during the meetings, shall be born equally by the parties. Each party's costs and expenses will be assumed by the party incurring them.

33. Treatment in Bankruptcy. The parties to this Lease hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the term of this Lease Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the "Code"), this Lease is and shall be treated as an "unexpired lease of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

34. Force Majeure. If a party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrections, war, terrorism, acts of God or other reasons of like nature, not the fault of

the party delayed in performing work or doing acts, such party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay. In the event that Tenant invokes this provision because damage to the Site has hindered, delayed, or prevented Tenant from using the Site, Tenant may immediately erect any temporary facilities on the Site necessary to resume service, provided that such temporary facilities do not unreasonably interfere with Landlord's ability to repair or restore the Site or interfere with the Landlord's public safety communications system. If, in Landlord's sole and absolute discretion, it elects to repair or restore the Site, upon completion of such repair or restoration, Tenant is entitled to repair or rebuild the Tower and/or related facility in accordance with the terms agreed upon in this Lease.

35. Miscellaneous.

- a. This Lease is not a franchise pursuant to state law or Hialeah Code nor is it a permit to use the rights-of-way under state law or Hialeah Code. Any such franchise or permit must be obtained separately from Landlord.
- b. Landlord and Tenant each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.
- c. This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.
- d. This Lease and performance hereunder shall be governed, interpreted, construed and regulated by the laws of the State of Florida. Venue for any litigation that may arise in connection with this Agreement shall be in Miami-Dade County, Florida. The Tenant agrees to be subject to the jurisdiction (subject matter and in personam) of the courts of Miami-Dade County, Florida and amenable to service of process.
- e. If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
- f. Landlord hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Site. Tenant accepts the Site "As Is."

g. Tenant shall use the utmost good faith to apply for, obtain, and keep in full force and effect all certificates, permits, licenses, and approvals affecting Tenant's ability to use the Site.

h. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

i. This Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between Landlord and Tenant.

j. Landlord covenants and agrees that so long as Tenant is not in default under this Lease beyond any applicable grace or cure period, Tenant's use and quiet enjoyment of the Site will not be disturbed by anyone claiming by, through and under Landlord.

This Lease was executed as of the date first set forth above.

LANDLORD:

CITY OF HIALEAH, FLORIDA

By: [Signature] 3-2-07
Mayor Julio Robaina Date

By: [Signature] 3/2/07
Rafael E. Granado, City Clerk

Attest:

Approved as to legal sufficiency and form:

[Signature]
William M. Grodnick, City Attorney

TENANT:

T-MOBILE SOUTH LLC

By: [Signature] _____ Date
Cody Stanford
Title: Vice President

Attest:

Corporate Secretary
(SEAL)

EXHIBIT A

LEGAL DESCRIPTION OF LAND

THE EAST 110 FEET OF TRACT 13 AND 20, A SUBDIVISION IN SECTION 31, TOWNSHIP 52, RANGE 41 EAST, AS RECORDED IN PLAT BOOK 9, PAGE 122, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND THE WEST 504 FEET OF TRACT 14, A SUBDIVISION OF THAT PART OF THE EAST $\frac{1}{2}$ OF THE NW $\frac{1}{4}$ OF SECTION 31, TOWNSHIP 52 SOUTH, RANGE 41 EAST, AS RECORDED IN PLAT BOOK 9, PAGE 32 $\frac{1}{2}$, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA,

LESS THE FOLLOWING DESCRIBED PORTION THEREOF:

BEGIN AT THE SOUTHWEST CORNER OF SAID TRACT 14, THEN RUN NORTH $0^{\circ} 04' 46''$ WEST, ALONG THE WEST LINE OF SAID TRACT 14, FOR 100.00 FEET TO A POINT; THENCE RUN EAST $89^{\circ} 51' 40''$ EAST, 180 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 14, FOR 95.00 FEET, TO A POINT; THEN RUN SOUTH $36^{\circ} 22' 50''$ EAST, FOR A DISTANCE OF 59.61 FEET, TO A POINT ON THE ARC OF A CIRCULAR CURVE, THE SAME BEING THE WEST LINE OF WEST 61 STREET, HAVING FOR ITS ELEMENTS A RADIUS OF 25 FEET, A CENTRAL ANGLE OF $100^{\circ} 33' 47.5''$, AND AN ARC DISTANCE OF 43.87 FEET, TO A POINT; THENCE RUN SOUTH $0^{\circ} 04' 46''$ EAST, FOR 93.69 FEET, TO A POINT ON THE SOUTH LINE OF SAID TRACT 14, THENCE RUN WEST $89^{\circ} 51' 40''$ WEST ALONG THE SOUTH LINE OF SAID TRACT 14, FOR 128.00 FEET, TO THE POINT OF BEGINNING.

Exhibit "B"

LEGAL DESCRIPTION OF A PORTION OF LAND TO BE LEASED TO T-MOBILE
IN O'QUINN PARK. 6051 W. 2ND AVE. IN THE CITY OF HIALEAH, FL.

A 20'X20' PARCEL OF LAND BEING A PART OF THE WEST 504.00 FEET OF
TRACT 14 IN THE EAST ONE HALF OF THE NORTHWEST ONE QUARTER OF
SECTION 31, TOWNSHIP 52 SOUTH, RANGE 41 EAST; AS RECORDED IN PLAT
BOOK 9 AT PAGE 32; TOGETHER WITH THE EAST 110.00 FEET OF TRACT 13
TOGETHER WITH THE EAST 110.00 FEET OF THE NORTH 167.60 FEET OF
TRACT 20, BOTH TRACTS, IN THE WEST ONE HALF OF THE NORTHWEST
ONE QUARTER OF SECTION 31, TOWNSHIP 52 SOUTH, RANGE 41 EAST, AS
RECORDED IN PLAT BOOK 9 AT PAGE 122 OF THE PUBLIC RECORDS OF
MIAMI-DADE COUNTY, FLORIDA THE AFORESAID PARCEL OF LAND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 20.00 FEET OF THE SOUTH 177.17 FEET AND THE EAST 20.00
FEET OF THE WEST 24.00 FEET.

SKETCH OF LEGAL

